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ABSTRACT

New court decisions that have claims like the "NLRB v. Yeshiva" case are considered. Excerpts of four cases that have filed Yeshiva-related claims are provided: University of New Haven, Polytechnic Institute of New York, Boston University, and Cooper Union. These four decisions have been characterized as significant defeats for proponents of private sector faculty unionism. Legal approaches taken by faculty unions (i.e., the attempts to distinguish the instant case from the original Yeshiva decision), have proven unsuccessful. The faculty members find themselves classified as managers within the definition of the National Labor Relations Act (NLRA); yet their decisions are mostly advisory and not binding on the administration. Without the protection of the NLRA, the administration is in a position to deal with faculty members individually, thereby providing opportunities for skewing of salaries and promotion in popular departments. A table is included that summarizes 42 "Yeshiva" claims acted upon through September 1984. (SW)

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NEWSLETTER

National Center for the Study of Collective Bargaining in Higher Education and the Professions

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"YESHIVAWATCH" -- YEAR FIVE

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NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS
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"YESHIVAWATCH"—YEAR FIVE

INTRODUCTION

In 1980, in NLRB v. Yeshiva University, 444 U.S. 672, the U.S. Supreme Court decided that the faculty at Yeshiva University did indeed conduct themselves as managers concerning the administration of the University and thus were not entitled to bargain under the protection of the NLRA. Since that time, over fifty colleges and universities have exercised Yeshiva-like claims, all of which have been reported in our YESHIVAWATCH.

Indeed, since we last updated our YESHIVAWATCH in August of 1983, four Yeshiva decisions, three by regional offices of the National Labor Relations Board and one by the full Board, have been issued. While our research revealed no new Yeshiva claims filed during the 1983-84 academic year, the four decisions reported herein have been characterized as significant defeats for proponents of private sector faculty unionism. Each of these long-awaited cases has particular signficance within the litany of the Yeshiva case law and while the rhetoric is expected to continue, many observers believe that the legal battles are now over. Faculty unions have lost virtually every significant Yeshiva case and with the four cases cited in this Newsletter there can be no doubt that the legal approaches taken by faculty unions, namely the attempts to distinguish the instant case from the original decision, have proven unsuccessful. Set forth below are excerpts from each of the decisions, as well as an analysis of the relevant case law. For a complete summary of the Yeshiva Decision, NLRB v. Yeshiva University 444 U.S. 672 (1980), the reader is referred to NCSCBHEP Newsletters Vol. 8, No. 1; Vol. 9, No. 2; Vol. 10, No. 3; and Vol. 11, No. 3.

Item No. 25: University of New Haven - 267 NLRB No. 149 (1983)

In July of 1982, an Administrative Law Judge (ALJ) of the NLRB regional office in West Haven, Connecticut, dismissed complaints filed by the University of New Haven Board of Faculty Welfare, Local No. 3956, C.S.F.T./A.F.T., alleging violations of the NLRA. The regional board in upholding the university's position found that the faculty union was not a labor organization "...under the Act as it is comprised exclusively of managerial employees and for the further reason that, in connection with its constitutional responsibility to hear and determine grievances on behalf of the University, it acts as a bargaining representative of the University." (See Case Nos. 39-CA-23, 39-CA-181, and 39-CA-183.)

The NLRB General Counsel filed exceptions to the decision of the ALJ; the record and decision were then reviewed by a three-member panel of the NLRB. The Board upheld the rulings, findings, and conclusions of the ALJ and adopted his recommended order. In sustaining the ALJ's decision the Panel stated in footnote 3:

> The General Counsel correctly notes that the Administrative Law Judge ignored certain uncontradicted evidence and failed to resolve issues involving certain other, conflicting, evidence. While the extreme brevity and generality of the Administrative Law Judge's Decision is unfortunate, we are convinced from a careful review of the record that the faculty has substantial authority to recommend decisions which formulate, determine, and effectuate

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management policies, and that those recommendations are, in most cases, effective. For example, during the 6-year period immediately prior to Respondent's refusal to bargain, the faculty promotion and tenure committee submitted 123 positive recommendations to Respondent's president. The President followed all of those recommendations. During that same period, the president declined to follow negative recommendations of the faculty in only five instances. Similarly, the recommendations of the faculty sabbatical leave committee have been followed by the administration in every instance save one, and in that case the administration accepted the faculty committee's alternate recommendation. In the area of full-time faculty hiring, it appears that the recommendations of the existing faculty are followed in about 90 percent of all cases. Though not clear from the record, it further appears that faculty or departmental recommendations concerning the hiring of part-time and adjunct faculty are followed in almost every instance, although some undeterminable but apparently small percentage of such hiring may be performed with little or no input from the fulltime faculty...

In its decision, the Board appeared to rely on the standards set forth in the "Yeshiva Quintet" issued on April 30, 1982. In these decisions (see Bradford, Montefiore, Ithaca, Thiel, and Duquesne, 261 NLRB Nos. 81-85), the Board further defined managerial employees as they exist within an academic setting. They also established a "factual yardstick" as a standard to measure other similar claims.

In a somewhat unorthodox rebuke of the ALJ who issued the regional decision, the Board buttressed their order by relying, in part, on a lengthy note (see footnote 3 above). In order to arrive at a decision, the Board undertook a detailed review of the record and gleaned from it a quantitative framework and a statistical measure of the decision-making power of the faculty union. This data was sufficient for the three-member panel to unanimously uphold the findings of the ALJ and dismiss the union's complaints.

This case is believed to be one of the earliest filed under the Yeshiva doctrine and to a certain extent may be considered a symbol by management representatives who are determined to challenge faculty unionism in private universities and colleges.

Item No. 26 Cooper Union - 2-CA-17843 (1983)

The Cooper Union Federation of College Teachers (CUFCT) filed a complaint against the institution charging that union recognition was withdrawn from the union who had served as the exclusive bargaining agent since 1976. During that time the parties had negotiated two collective bargaining agreements. However, subsequent to Yeshiva, the employer claimed that the faculty are not employees within the meaning of the Act. In the 115-page decision, the regional NLRB dismissed the complaint of the faculty union in its entirety. The ALJ concluded that the faculty are managerial employees and that they do not constitute a labor organization within the meaning of the Act.

The ALJ stated:

> While the issue is not entirely free from doubt, I conclude that based upon the Cooper Union faculty's predominance and considerable authority in such academic areas as student admissions and class size, academic standards and retention, grading standards, requirements and system, curriculum, calendar, standards and fixing of class and examination schedules, and the protection of academic freedom in the classroom and in the school and due process in the determinations of tenure, promotion, and terminations relating to other than the elimination of entire academic programs, its authority in jointly determining and implementing the most recent academic reorganization placement of humanities faculty and identity and status of its chairperson, and its considerable consultative role in other non-academic areas of faculty concern, such as tenure, promotion, and hiring of full-time faculty, among other areas, the full-time faculty employed by Cooper Union exercise managerial authority in sufficient areas deemed significant or "vital" by the Supreme Court and the Board so as to share the real responsibility for governance of the institution and to constitute managerial employees within the meaning of the Act. Accordingly, I conclude that the allegations of the Complaint have not been sustained.

The union argued that while they may indeed enjoy certain rights and privileges enunciated above, these rights were won through the collective bargaining process and in essence, Yeshiva cannot apply to this type of situation. If held otherwise, the faculty could be said to have bargained themselves out of existence. The decision takes note of that and refers to COMS, 265 NLRB No. 37, which was adjudged to be determinative on this issue.

Cooper Union is similar in scope to Wagner, Polytechnic, and Boston University, all three institutions which had negotiated previous collective bargaining agreements only to have found that, to a certain extent, the faculty unions had bargained themselves out of existence.

Item No. 27: Polytechnic Institute of New York - 29-UC-136 (1984)

In Polytechnic, a case considered by many observers to be the strongest by proponents of faculty unionism attempting to distinguish Yeshiva, the regional director of the NLRB office in Brooklyn ruled that "...the full-time faculty members at the Institute 'formulate and effectuate management policies by expressing and making operative the decisions of their employer through taking or recommending discretionary actions that effectively control or implement employer policy'." While acknowledging that substantial authority enjoyed by the AAUP Chapter at Polytechnic had been derived through the collective bargaining process, nevertheless, the faculty had, in essence, bargained themselves out of existence.

In the instant case, the union had been certified as the bargaining agent in 1970 and had negotiated two contracts with the employer. Subsequent to Yeshiva, the institute petitioned for unit clarification maintaining that all full-time faculty and librarians are managerial and not entitled to bargain under the Act. Relying on the standards as set forth in Yeshiva, as well as the "Yeshiva Quintet," the regional director analyzed the various structural and substantive components of the university. In reaching his decision, he stated:

> While there are varying degrees of faculty participation in the decision-making processes of the different departments, it appears from the record that most decisions are reached by department faculty through consensus. This is true for both academic and non-academic concerns. The record also reflects that all faculty members participate to the maximum extent possible in the majority of decisions which affect their departments.

An examination of the Institute's curriculum, course schedules, teaching loads, academic calendar, grading systems and policies, admissions standards and transfer credit, degree and graduation requirements, budgetary matters, salary issues and grievance adjustment, and decisions regarding hiring, tenure, sabbaticals, reappointments, and promotions was conducted. In virtually all of these areas, the regional director held that the faculty did exercise managerial authority.

Concerning curriculum, it was adjudged that "the faculty plays a dominant role in formulating and implementing the Institute's curriculum." Similar findings were reported concerning course scheduling, teaching loads and the grading system.

While the union argued that the faculty's role in certain areas (most notably, curriculum, admission standards and transfer credits) was a function of the faculty's specialized professional expertise and did not warrant a finding of managerial status, the regional director rejected this claim.

While the faculty's input on budgetary matters was not as substantial as that of department heads and center directors, faculty did have input into the process.

Concerning the critical issue of personnel actions, the union's position that there is no "shared authority" at the Institute was rejected. The regional director stated "...the record in this case establishes that the faculty exerts considerable influence with regard to hiring, tenure, sabbaticals, reappointments and promotions of faculty members." Relying on the theory of concurrence figures, the director stated:

> The record indicates that the faculty has a substantial impact on decisions to grant or deny tenure at the Institute. While the collective bargaining agreement between the Union and the Institute provides that the ultimate decision with respect to tenure rests with the president and the administration, the evidence demonstrates that in the past ten years, the administration has followed faculty recommendations in the majority of cases.

The union's claim that over fifty percent of faculty tenure recommendations are derived by the administration was categorically rejected. The record showed that the concurrence ratio for the thirty-five tenure recommendations made by the faculty senate committee between 1973 and 1980 was approximately seventy-five percent and not the lower percent put forth by the union.

The ALJ summarized the position of the faculty in academic matters stating:

> In the area of academic concerns, it is clear that the full-time faculty members exercise virtually complete control either through activities in departmental committees or faculty Senate committees....
>
> The record establishes that faculty control in areas of academic concern extends to matters of academic policy....
>
> It is clear from the foregoing that the faculty herein meets the Yeshiva standard in the area of academic concerns. Here, as in Yeshiva, the faculty exercises virtually complete control in vital areas, including curriculum, course schedules, course enrollment levels, faculty work assignments, grading policy, academic standing, degree requirements.... Thus,

> to the extent that the industrial analogy applies, the full-time faculty at the Institute, like the faculty in Yeshiva, determines "the product to be produced" and the "customers who will be served," and hence effectively controls employer policy in these areas.

While Polytechnic was viewed as a major defeat for advocates of faculty unionism, optimists still pointed toward the undecided Boston University case as the one decision that had the potential impact of distinguishing Yeshiva. One month later the Boston University decision was handed down and with it came a crushing defeat for faculty unionism.

Item No. 28: Boston University - 1-CA-11061 (1984)

In perhaps the most widely publicized and litigious of all the Yeshiva cases, the NLRB regional office in Boston ruled that the Boston University Chapter of the American Association of University Professors is not a labor organization and therefore not entitled to bargain collectively under the protection of the Act. Furthermore, the ALJ found "...that all full-time faculty above the rank of instructor in the Schools and Colleges studies (sic) in this case to be supervisors within the meaning of Section 2(11) of the Act."

In order to fully appreciate the impact of the Boston University case, some explanation of the background is required. In 1975, the regional director issued a Direction of Election Order which resulted in a "win" for the Faculty Association. The University objected to the unit determination decision and subsequently refused to bargain with the newly certified faculty agent. In September of 1975, the Association filed a charge against the University claiming a refusal to bargain under Section 8(a) (5) of the NLRA. In March of 1977 in Trustees of Boston University 228 NLRB 1008 (1977), the Board upheld the Association's position and denied the University's claim. The University appealed the decision to the United States Court of Appeals for the First Circuit. In April of 1978, the Court of Appeals affirmed the Board's ruling (see Boston University v. N.L.R.B., 575 F.2d 301 (1978)).

The University appealed this decision to the United States Supreme Court. However, in the intervening period, the USSC ruled on Yeshiva which directly impacted on the University's claim. In March of 1980, the USSC granted the University's petition for a writ of certiorari and remanded the case back to the Court of Appeals which in turn remanded it to the NLRB. At that point, the Board asked for statements "...for the purpose of adducing evidence on the supervisory and/or managerial status of the University's chairpersons and other faculty members in light of and consistent with the Supreme Court's decision in Yeshiva."

Hearings began in December of 1980 and continued through March of 1983. One hundred and fifty-seven days of hearings were held; a record consisting of 21,820 pages of testimony and 1,180 exhibits was compiled.

It should be noted that while the various hearings and appeals were in process, the University and the Association were signatories to a labor agreement effective April of 1979; that first contract expired in August of 1981 and was replaced by a successor agreement which ran from September 1981 through August 31, 1984. With this decision, the University stated that they would not negotiate a successor agreement. The Association maintains that an appeal will be taken in this case to the full Board and the courts, if necessary.

In reaching his decision, which ran some 126 pages in length, the ALJ embarked on a review of governance procedures in higher education in general and Boston University in particular. Virtually every aspect of committee organization and workings was analyzed with microscopic intensity. Although several areas were cited (including budget, university-wide committees, councils, and assemblies) in which the faculty exert little "visible impact," the findings of the ALJ sustained the University's position. As an example, with respect to the budgetary process, he stated:

> To sum up, the evidence shows no appreciable participation by faculty in the budget process at the College or department levels....

Another area addressed concerns the selection of college and university deans. The ALJ concluded:

> To conclude, there is evidence that faculty members do participate in the Dean selection process. That participation is active, meaningful and includes conducting searches for likely candidates,...screening these candidates by studying their applications, resumes and other documents, interviewing candidates, and joining with administrators, alumni, Trustees or students, however search committees are made up, in making recommendations to the President....

Skipping from a macroexamination of the University as a whole, the ALJ then concentrated on an analysis of "Faculty Participation in Government at the Schools and Colleges." With respect to The College of Basic Studies, the ALJ found:

> ...that the faculty at CBS, and I mean all of the faculty, senior and junior, have effective control over the curriculum of the College. To the extent that the curriculum, the program offered, composes the primary business of the College, then the faculty exercises governmental authority in that area.

The issue of degrees and degree programs was also analyzed:

> Consistently with my findings on the powers of the faculty in Sections C, D, E and F, above, dealing with the University and the School and College level, I find that faculty have a large measure of control over degrees and degree programs, tempered by budgetary restrictions and limitations, and by the ebb and flow in popularity of programs and courses among students, and in the disciplines of which those degree programs and courses are parts.
>
> (Editor's Note: Section C refers to University Committees, Section D to The Budget, Section E to The Schools and Colleges, and Section F to Faculty Participation in Government at the Schools and Colleges).

A separate section was devoted to the relationship between the faculty and students. Included was the following: (1) admissions, (2) financial aid and scholarships, (3) grades, (4) academic requirements, (5) textbooks, (6) teaching methods, (7) student discipline, (8) class size, (9) teaching load, and (10) scheduling. With respect to these issues the ALJ stated: "In a real sense, the faculty has control of the size of the student body, by controlling the gates at either end of the academic channel, and directing the flow of students between those points."

As other decisions before this one have done, a great deal of emphasis appears to have been placed on faculty's role in personnel and tenure decisions. In the area of faculty appointments, the ALJ concluded that:

> The facts show that faculty at the five Schools examined here have the major role in advertising, recruiting, reviewing files, and finally in recommending candidates. I did not observe, during President Silber's appearance on the witness stand in this proceeding, that he is much given to understatement, but his description of the faculty's role in the hiring process that "they don't decide who is to be hired. They participate in deciding who is to be hired" does not restrict the level of participation, or the effectiveness of that participation, as revealed by the record here.

Portions of the union's case appear to have been based on the exercise of presidential power as exhibited by President Silber, the President of the University. In this instance, the ALJ weighed the President's testimony and in spite of his admission found that the faculty exercised a substantial degree of participation in the process.

As in virtually every other Yeshiva decision, the use of concurrence figures to demonstrate faculty managerial powers concerning reappointments was also utilized here. The ALJ stated:

> In this area, as in hiring and reappointment, the University submitted concurrence figures designed to show me, and any other reader of the record, that in a considerable majority of the decisions, the faculty and Trustees' actions concurred.... According to my figures, out of a total of 79 tenure decisions counted, I found 57 agreements between department faculty and the Trustees, 13 disagreements, 2 ties (where there was a tie vote of faculty and I list the figure but can think of no way to count it positively or negatively) and 7 recommendations of 3-year extensions of time before the tenure decision.... My figures show a concurrence rate of just over 77 percent. This is appreciably lower than the concurrence rates I have found to be reached in the hiring process, but this difference, I believe, reflects the overwhelming importance of tenure decisions from the pont (sic) of view of the individual, the academic discipline, and of the University both from a scholarly and economic viewpoint. Given these factors, I find that a concurrence level by the trustees with faculty recommendations at better than a three to one ratio shows substantial faculty impact on the tenure process.

While it is difficult to assess the meaning of a 77 percent concurrence figure, it is clear that in this instant case the ALJ relied upon it to substantiate his conclusions that faculty exercise managerial and supervisory powers.

A major issue at stake in this case was the status of the department chairpersons. Indeed, in its original defense first raised nearly a decade ago, the University contended that chairpersons were managerial and must be excluded from any bargaining unit. The ALJ concurred with the University's position and found all chairpersons supervisors under Section 2(11) of the NLRA and under Adelphi University, 195 NLRB 639 (1972). The ALJ stated:

> On the basis of these facts, together with my findings in respect to the participation of chairperson in government, degrees and degree programs, teaching loads, class size and scheduling, and faculty appointments, reappointments, tenure and promotions, I find that department chairpersons are, as faculty members, and as persons in the position of exercising additional powers, are intimately and closely

concerned with, and exercise considerable authority in these areas.

Moreover, the actions of chairpersons in reviewing the performance of faculty and non-faculty alike; in the scheduling of classes and administrative and clerical activities; in the hiring, firing, disciplining of clerical, technical and administrative employees and part-time faculty; in managing the paperwork, answering inquiries and paperwork from many sources; in overseeing the expenditure of the current department budget, and preparing the next year's budget; in organizing and directing the teaching and scholarly activities of their departments, show that chairpersons exercise functions which can only be described as supervisory under the provisions of Section 2(11) of the Act,... and I so find them to be supervisors under that section.

In conclusion, the ALJ reiterated the reasons why he found the faculty to be both managerial and supervisory under the guidelines as set forth both in the Act and the Yeshiva doctrine. In relying, in part, on AAUP Policy Documents and Reports, as well as the collective bargaining agreements themselves, he noted that they contained provisions which are "...quite different that (sic) those in ordinary labor agreements, and indicate to me the faculty's concept of itself as more a partner in than a party to, the management of the affairs of the University." His summary as set forth below, while particular to Boston University, does serve as a potential guide for future Yeshiva decisions.

The facts which I have found in this case show that the faculty at Boston University effectively determine the curricula of the several Schools and Colleges.

The faculty have not, or at least that there was no evidence that they have, established the University-wide grading system, but the evidence is undisputed that the grades given students by faculty members will not be changed without the consent of that faculty member.

The facts show that the faculty determine admission and matriculation standards. This may be subject to some question at CLA/GRS because of the attempt of the College's admissions committee to raise the SAT standards, but in the end I find that the faculty agreed with the recommendation of the Director of Admissions that the standards be returned to their previous level. In CBS, SPC, SAR the facts seen (sic) clear that the faculty determine the admissions standards. At SMG the matter is not clear, but looking at all the facts, it is reasonable and logical to infer that the faculty at least concurs in the admissions system being used.

Faculty have total authority in determining class schedules. They decide, within budget limitations, (and I note that within those limitations faculty authority to improvise, reassign and innovate is taken for granted), what courses will be offered, when they will be scheduled, and to whom they will be taught. They debate and determine teaching methods, grading policies and matriculation standards. They effectively decide which students will be admitted, retained and graduated.

At SAR, at SPC, and at CBS the views of faculty and establishment of admissions standards have determined, and continue to determine the size of the student body. There is no direct evidence that faculty have had a say in determining tuition, but since tuition money constitutes the bulk of the University's income, and since the number of students is a principal factor in settling tuition rates, the role of the faculty in setting admissions standards and determining the size of the student body indirectly but necessarily has an impact on the tuition rate itself.

The evidence shows very clearly that the faculty at Boston University play a predominant role in faculty hiring, tenure, termination and promotion.

It may be truly said at Boston University, that "it is difficult to imagine decisions more managerial than these, and I find that the faculty are managers within the standards set out in Yeshiva,"...

I have found that the department chairperson, while managers in view of their status as faculty are also supervisors as defined in Section 2(11) of the Act, Adelphi University,... Using the same criteria I find that the directors of the centers, institutes and programs affiliated with CLA/GRS are likewise statutory supervisors.

The evidence also shows that faculty members while serving as principal investigators on research grants and contracts exercise supervisory authority over faculty, research associates, technical and clericals employed by those principal investigators. Principal investigators are, thus, supervisors within the meaning of the Act, Northeastern University, 218 NLRB 247, 254 (1975).

This leaves us with the question of whether the rest of the faculty, rank-and-file members, or principal

investigators who employ no staff are statutory supervisors because of their involvement with the hiring, reappointment tenure and promotion process.

There is no indication in the evidence here that rank-and-file faculty participate in the hiring process for clerical employees or have much to do with supervising the work of those employees. Faculty are involved in the hiring of students, teaching assistants, graduate assistants, research assistants and undergraduate and graduate graders, and helpers. Faculty direct the work of these students. Here there seems to me to be too much of a connection with the educational process, the students are learning while they are employed, to base a finding of supervisory status for faculty.

We are left, then with the question of whether the role of faculty in the hiring and promotional process is sufficient to permit a finding that they are statutory supervisors....

In my view, faculty members effectively recommend the hiring of other faculty members....

I find, therefore that all full-time faculty above the rank of instructor in the Schools and Colleges studies (sic) in this case to be supervisors within the meaning of Section 2(11) of the Act.

The majority of the cases decided by the Board since the issuanced (sic) of Yeshiva are in accord with this Decision. Ithaca College, 261 NLRB 577 (1982); Duquesne University of the Holy Ghost, 261 NLRB 587; Thiel College, 261 NLRB 580; College of Osteopathic Medicine and Surgery, 265 NLRB No. 37 (1982). In cases such as Bradford College, 261 NLRB 565; Florida Memorial College, 263 NLRB 1248 (1982) and Lewis University, 265 NLRB No. 157 (1982) the factual situations are not comparable to the situation at Boston University.

Boston University raises several questions concerning the possible extension of the Yeshiva doctrine. A careful reading of Footnote No. 31 of the original Yeshiva decision reiterates that only one institution was involved in that case and care must be exercised to ensure the proper application of the newly defined Yeshiva standard. In the instant case, the ALJ acknowledges that there are areas in which the faculty do not exercise managerial authority, most notably the budgetary process, university-wide committees, hiring of the faculty and clerical personnel, and the running of individual colleges. Yet in spite of that, the Yeshiva doctrine appears to have been extended. Perhaps the critical questions to be asked are these: Must faculty exercise managerial authority in every one of the areas discussed in the initial decision to be denied the protection of the Act? Can the University retain managerial control of certain areas where the faculty have been designated as managerial and supervisory employees? The answer in Boston University appears to be yes.

One other extension of the Yeshiva doctrine concerns the decision of the ALJ to classify faculty as supervisors within the meaning of the Act. While the Supreme Court, in the original Yeshiva decision, declined to reach the supervisor issue, ruling instead on the managerial provisions of the Act, the ALJ, for reasons that are not clear, utilized the supervisory standard as well. Relying in part on Adelphi while ignoring the lead supervisory cases, the ALJ might have inadvertently given the Union further grounds for appeal. (See NLRB v. Bell Aerospace Co. 416 U.S. 267, (1974), Universty of Vermont 223 NLRB 423 (1976), and Presbyterian Medical Center 218 NLRB 1266 (1975).) Conversely it has been suggested that even if the supervisory status aspect of the decision is reversed, the managerial declaration is sufficient to deny the faculty protection under the Act. What route the appeal might take is speculation at this point, however, unless new and dramatic approaches are utilized, the results are expected to be similar to the last decision of the NLRB in the instant case.

With the last four decisions of the NLRB going against the unions, faculty, especially at private colleges and universities, find themselves in a "catch 22" position. They have been classified as managers within the definition of the NLRA yet their decisions are mostly advisory and not binding on the administration. Without the protection of the NLRA, the administration is in a position to deal with faculty members individually thereby providing opportunities for skewing of salaries and promotion in popular departments.

How the unions will combat these overwhelming setbacks is not clear. Perhaps a new model--unique to academicians and their roles--will have to be formulated.

Table 1 summarizes Yeshiva claims acted upon through September 1984.

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TABLE 1

DISPOSITION OF YESHIVA CLAIMS

Institution	Disposition
Adrian College	Regional Director NLRB Detroit, Michigan held that college committed an unfair labor practice when it withdrew recognition from union. Faculty entitled to bargain under protection of NLRA (7-CA-17563, 1983).
Amer. Univ. English Language Inst.	Regional Director NLRB Baltimore rejected university's claim that faculty are managerial employees. Faculty Association elected as bargaining agent 28-1. NLRB certification issued (5-RC-11743, 1982).
Ashland College	AAUP withdrew union status--college dropped Yeshiva claim. AAUP 1940 Statement incorporated into new Ashland Agreement. Faculty received voting rights on all committees established by Board of Trustees. AAUP Chapter retained dues checkoff.
Boston Univ.	Regional Director NLRB Boston ruled that faculty and chairpersons are managerial and supervisory employees and therefore not entitled to bargain under protection of NLRA (1-CA-11061, 1984).
Bradford College	NLRB ruling held that faculty are entitled to bargain collectively--bargaining agent election held May of 1982. International Brotherhood of Teamsters defeated 15-10 by No-Agent (261 NLRB No. 81, 1982).
Catholic Univ. Law School	Ruling by U.S. Circuit Court of Appeals for Washington, D.C. that faculty not entitled to bargain under protection of NLRA (1980).
Coll. of Osteopathic Medicine & Surg.	NLRB ruled that entire faculty were managerial and not entitled to bargain under protection of NLRA. Union ordered decertified (265 NLRB No. 37, 1982).
Cooper Union	Regional Director NLRB New York City held that faculty are managerial and not entitled to bargain under protection of NLRA. Union's complaint alleging unfair labor practice dismissed (2-CA-17483, 1983).
Curry College	AAUP dropped status as Board certified union--institution dropped all Yeshiva litigation.
C.W. Post Ctr.-LIU	University voluntarily recognized union as representative of managerial employees. Union acknowledged lack of NLRB jurisdiction over faculty.
Daemen College	AAUP withdrew union status--college dropped Yeshiva claim. Faculty Senate submitted faculty nominees, one of whom chosen as voting member of Board of Trustees.
Drury College	Settlement to Yeshiva issue reached by parties. "Philosophy of governance" and "meet and confer" policy implemented. All litigation dropped.
Duquesne Univ. Law School	NLRB ruled that faculty are managerial employees and not entitled to bargain under protection of NLRA (261 NLRB No. 85, 1982).
Florida Memorial College	College's petition for unit clarification denied. NLRB held Yeshiva not controlling and faculty entitled to bargain under protection of NLRA (263 NLRB No. 160, 1982).
Ithaca College	NLRB ruled that faculty are managerial employees and not entitled to bargain under protection of NLRA (261 NLRB No. 83, 1982).
Kendall School of Design	Regional Director NLRB Detroit held faculty were not managerial and are entitled to bargain collectively under the Act (7-UC-226, 1982).
Lewis University	NLRB dismissed unit clarification petition of university seeking a declaration of managerial status for all employees. Board rejected challenge to its own jurisdiction to hear the matter (265 NLRB No. 157, 1982).

TABLE 1 - Continued

DISPOSITION OF YESHIVA CLAIMS

Institution	Disposition
Livingstone Coll.	Regional Director NLRB Winston Salem held faculty not managerial and entitled to bargain under protection of NLRA. Election held May 1981. Subsequent request for review by college granted. Ballots impounded. Decision pending (11-RC-4957, 1981).
Loretto Heights	NLRB Administrative Law Judge ruling held that faculty were not managerial and that college committed an unfair labor practice by refusing to bargain. Bargaining order issued. College appealed decision to 10th United States Circuit Court of Appeals. Court upheld NLRB order (JD-Sf-159-81, 27 CA-6667, 10th U.S. Cir. Ct. of Appeals, 82-2332, 1984).
Milton College	College closed May 1982. NLRB closed case without ruling.
Montefiore Hosp. & Med. Center	NLRB ruling that staff doctors entitled to bargain collectively under the protection of the Act. Board rejected managerial participation and alignment claims (261 NLRB No. 82, 1982).
Mount Allison Univ. New Brunswick, Canada	Industrial Relations Board of New Brunswick, Canada held, that faculty at Mount Allison University are entitled to bargain collectively under the protection of the New Brunswick Industrial Relations Act. Board rejected Yeshiva-like claim raised by university and found faculty association a duly designated trade union appropriate for collective bargaining (I.R.B. 1-6-81, 1983).
Mount Vernon Coll.	AAUP Chapter voluntarily resigned union certification in exchange for Memorandum of Understanding between the parties. All Yeshiva claims dropped.
Nasson College	College entered bankruptcy leaving Yeshiva question moot. Parties agreed in the 1981-83 labor contract to disagree on managerial status of faculty.
New York Medical College	NLRB held that faculty are not managerial and are entitled to bargain under protection of NLRA. Election held, several ballots challenged... Union withdrew its election petition (2-RC-18687, 263 NLRB No. 124, 1982).
Ohio Northern Univ.	Regional Director NLRB Cleveland, with acquiescence from NLRB Office of Appeals, reversed previous position which found faculty non-managerial and entitled to bargain under protection of NLRA. Complaint against University withdrawn. Union ordered decertified.
Parsons School of Design	Union involved in organizing drive, NYSUT, agreed with management that if unit were to be certified, faculty would not be deemed managerial. Unit consisted of part-time faculty only; union relinguished claim to fulltime faculty. Election results impounded; case on appeal to full Board.
Polytechnic Inst.	Regional Director NLRB Brooklyn found faculty to be managerial employees and not entitled to bargain under protection of the Act (29-UC-136, 1984).
Pratt Institute	NLRB ruling held that Yeshiva was not applicable to non-faculty administrative employees. Held Pratt had engaged in unfair labor practices. Cease and desist order issued (256 NLRB No. 175, 1981).
Puerto Rico Jr. College	NLRB affirmed ALJ's ruling that college violated NLRA by refusing to bargain over certain issues. Board rejected college's claim that Yeshiva means "...a unit of employees can be an appropriate unit for bargaining about some aspects of terms and conditions of employment, while simultaneously being an inappropriate unit for bargaining about other aspects of the employment relationship" (24-CA-4133, 24-CB-1053, 265 NLRB No. 3, 1982).

TABLE 1 - Continued

DISPOSITION OF YESHIVA CLAIMS

Institution	Disposition
St. Joseph's Coll.	Regional Director NLRB Boston held faculty not managerial and entitled to bargain under protection of NLRA. Decision appealed to NLRB on jurisdictional grounds. Decision pending (1-RC-17, 262, 1981).
Seton Hall Univ.	Regional Director NLRB Newark granted unit clarification petition of university and found all full-time faculty members to be managerial employees and not entitled to bargain under the protection of the Act (22-RC-8765, 22-RM-599, 22-UC-96, 1983).
Simon's Rock Early Coll.	Labor agreement reached with non-Board certified union. Petition for union certification withdrawn by AAUP in exchange for settlement. College dropped Yeshiva issue.
Southampton Coll.-LIU	University voluntarily recognized union as representative of managerial employees. Union acknowledged lack of NLRB jurisdiction over faculty.
Stephens College, Missouri	Regional Director NLRB Columbia, Missouri ruled that faculty are managerial employees and are not entitled to bargain under protection of NLRA (17-CA-9600, 17-CA-9607 17-CA-9658, 1983).
Stephens Inst./ Academy of Art	Ninth United States Circuit Court of Appeals rejected institution's claim that faculty are managerial. Yeshiva not controlling (620 F.2d 720, (9th Cir.)).
Stevens Inst. of Technology	Regional Director NLRB Newark ruled that faculty are managerial employees and not entitled to bargain under protection of NLRA (22-CA-10267, 1982).
Thiel College	NLRB ruling held that faculty are managerial employees and are not entitled to bargain under protection of NLRA (261 NLRB No. 84, 1982).
Univ. of Alaska	University's affirmative defense that Yeshiva is applicable was denied. Alaskan Labor Relations Agency held that even if faculty were deemed managerial, they would be entitled to a separate bargaining unit of managers (UA-80-2, 1981).
Univ. of New Haven	NLRB affirmed decision of Regional Director, West Haven, Connecticut, which held that faculty were managerial employees not entitled to bargain under protection of NLRA (39-CA-23, 39-CA-181, 39-CA-183, 267 NLRB No. 149, 1983).
Wagner College	Regional Director NLRB Brooklyn granted employer's petition for unit clarification and found all full-time faculty members, including department chairpersons to be managerial employees. Union decertified (29-UC-147, 1982).
Wichita State Univ.	PERB Hearing Officer, State of Kansas, issued recommendation that Yeshiva not applicable to Wichita State University, a public institution (75-UD-1-1980, 1981).
Wordsworth Academy	NLRB ruled that faculty are non-managerial and lacked the level of authority to warrant exclusion, under the Yeshiva doctrine, from protections of the Act. Only secondary school claim filed thus far (262 NLRB No. 42, 1982).

Source: NCSCBHEP Research